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To the Labor and Public Employees Committee
The Connecticut General Assembly
300 Capitol Avenue
Hartford, CT 06106

re: Testimony in Support of S.B. No. 914 and S.B. No. 1037

Dear Co-Chair Senator Edwin Gomes and Co-Chair Representative Peter Tercyak:

I regret being unable to testify in person today, so please accept and consider my written comments.

My experience as a lawyer representing plaintiffs in unpaid labor situations has shown me exactly how weak Connecticut's laws are when it comes to compensating people who suffer wage theft from unscrupulous employers.

The State of Connecticut owes it to workers to do better.

I stand in full support of S.B. No. 914, which would change in Connecticut General Statutes Section 31-68 and Section 31-72 to automatically award double damages to employees brave enough to file unpaid wage claims.

I also stand in full support of S.B. No. 1037, which would allow employees or their agents to lien a rogue employer's personal or real property after a judgment for unpaid wages.

Federal and state law has long recognized "the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association."¹

We need the General Assembly to step up here and insure that people who discover wage theft can be awarded double damages. The federal Fair Labor Standards Act automatically awards double damages.

As it stands now, Connecticut law does not, and allows a judge to find the employer operated arbitrarily, in bad faith or unreasonably before awarding double damages.

I recently represented a client who sued for unpaid wages (See *Uddin v. Morshed*, NNI-CV13-6006594-S). My client, Mohammad Uddin, worked in a cell phone store in a mall. Since the mall required the store to be open for 70 hours a week, his boss forced him to work upwards of 70 hours a week.

My client was paid under the table, in cash, sporadically. We sued under federal and state law. The employer appeared on his own behalf, but we soon won a motion for summary judgment against the employer.

¹The National Labor Relations Act of 1935 Section 1, at 29 U.S.C. §151.

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Judge Jack Fischer presided. At oral arguments on July 28, 2014, Judge Fischer asked why double damages were appropriate. I submitted a memorandum of law the following day to more thoroughly argue the matter (see JIS #118.00 in the aforementioned docket).

Yet state law did not support a mandatory award of double damages – it was up to the judge's discretion. I quoted *Saunders v. Firtel*, 293 Conn. 515, 530 (2009) for an explication, and will do so here (internal citations and quotations omitted).

Whether a party's conduct is wilful is a question of fact. What constitutes willfulness is a question of fact. The term has many and varied definitions, with the applicable definition often turn[ing] on the specific facts of the case and the context in which it is used. As we previously have observed, Black's Law Dictionary (6th Ed.1990) demonstrates the varied ways that wilful has been defined ranging from 'voluntary; knowingly; deliberate . . . [i]ntending the result which actually comes to pass; designed; intentional; purposeful; not accidental or involuntary' to [p]remeditated; malicious; done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences.

But Judge Fischer did not hold the employer paying my client under the table – with the motive of avoiding all kinds of tax obligations and worker protection laws – was done with bad motive or purpose.

I pleaded with Judge Fischer: "Courts have awarded double damages where where the employer requested the employee to work extra hours, assured employee payment and then subsequently denied payment of overtime wages. See *Butler V. Hartford Technical Institute, Inc.*, 243 Conn. 454 (1997). Here, Defendant Morshed required Plaintiff to work more than 70 hours a week, guaranteed him payment, and failed to pay him."

We also argued that "In multiple cases, the United States District Court for the District of Connecticut has found that paying an employee in cash, making no effort to insure employee was fully paid, and failure to keep time records were indicia of willfulness."

Judge Fischer was not swayed. And despite including a federal claim of action in the state court, he did not apply the federal penalty of automatic double damages.

So an employer can fail to keep accurate records, work someone more than 70 hours a week without overtime and without paying him for weeks at a time, yet avoid a serious penalty like double damages.

If this kind of under-the-table employment – a situation designed to take advantage of the employee – is insufficient to merit double damages, what does qualify for double damages?

My client claimed in his affidavit of debt for \$5,417.84, as well as double damages and interest, which total \$19,264.83. (JIS #116.00.)

I calculated the double damages on top of the original damages, which may be seen to some as treble damages. If Judge Fischer did not like my calculation of essentially treble damages, then he could have cut the award (as he did).

We also sought some \$9,632.42 in attorneys' fees. C.G.S. §31-68 awards attorneys' fees on top of double damages. In a situation like this, double damages and attorneys' fees should have been granted.

I did not enjoy calling my client on August 7, 2014 to tell him Judge Fischer awarded a judgment of \$4,950.01 in wages and \$4,950.01 in attorneys' fees, plus \$508.37 in costs. While it looks like double damages, it is not.

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That my attorneys fees were halved sends a message to counsel like myself that their work on important cases like this – which are a defense of the 13th Amendment of the Constitution of the United States – do not deserve full payment.

Quickly, I filed for an order of weekly payments, which the debtor ignored. Post-judgment interrogatories revealed some bank accounts with funds, but by the time our marshal served the execution, little remained.

A few days after the execution, the debtor declared bankruptcy in New York. This is how workers get shafted.

A wage lien would be important, as well. A wage lien, like a mechanics' lien, would give people like my client an automatic hold on the employers' property, real and personal.

Many legal practitioners who perform debt collection work in Connecticut know that a limited number of marshals will ever execute judgments against personal property, and even then, the employee creditor is unlikely to obtain full repayment from a levy on personal property.

Finally, while this is not presently in any bills getting public hearing that I am aware of, I advocate for the state to define wage theft as fraud, so a wage theft award is non-dischargeable in bankruptcy. I also think in this kind of situation, if a civil award is granted, that an employer should be prosecuted.

If my client stole thousands of dollars from his boss, his boss would press charges. But the boss can steal thousands of dollars from a worker and walk away virtually unscathed.

Harsh penalties will tell employers that while society values job-creation, society will not tolerate in any way wage theft.

My client lost months of his life in unpaid service to his employer. He is a hard working man trying to make his way in this rough and tumble world, and he found little help in the courts. We can change part of that.

Connecticut can join those states which recognize workers should be automatically given double damages.

As the Legal Assistance Resource Center of CT, Inc. has pointed out: "This bill provides a simple fix that does not cost the state money and in fact, allows for recovery of taxes for the state. Business benefits by creating a level playing field instead of one where unscrupulous employers undercut legitimate employers because they pay less for their labor."

The burden should be on the employer to show a good faith basis for underpayment of wages. This will hit employers in the pocketbooks, and be a deterrent against wage theft in the future.

Thank you for your time and cooperation, and I look forward to seeing double damages as an automatic award, and for harsher penalties against unscrupulous employers.

Regards,



Kenneth J. Krayeske, Esq.

/kjk